

MONTANA LEGISLATIVE HISTORY

Chapter 561 19 77

Bill H _____ S 120 Original bill & history ____C

H. Committee on State Admin.

Hearing Date(s) Mar 03 ✓ C

Mar 23 ✓ C

_____ C

_____ C

Date Out _____ C

S. Committee on State Admin.

Hearing Date(s) Feb 02 ✓ C

Feb 04 ✓ C

_____ C

_____ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

1 Senate BILL NO. 620
 2 INTRODUCED BY Stony
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
 5 SUSPENSION OF AN ADMINISTRATIVE RULE DURING THE INTERIM
 6 BETWEEN LEGISLATIVE SESSIONS BY MAIL BALLOT OF ALL MEMBERS
 7 OF THE LEGISLATURE; AMENDING SECTION 82-4205, R.C.M. 1947."
 8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 82-4205, R.C.M. 1947, is amended to
 11 read as follows:

12 "82-4205. Filing of rules — effective date of rules.
 13 (1) On or before the 60th day following the effective date
 14 of this act, each agency shall file with the secretary of
 15 state a certified copy of each rule adopted by it on or
 16 before the effective date of this act, and remaining in
 17 effect. Any rule not so filed shall be deemed to have been
 18 abrogated by the agency and shall be void and of no effect.

19 (2) Each agency shall file with the secretary of state
 20 a certified copy of each rule adopted by it subsequent to
 21 the effective date of this act. Each rule shall become
 22 effective ~~ten~~ {10} days after publication in the Montana
 23 administrative register or code as provided in ~~section 6~~
 24 {82-4206} of this act, except that:

25 (a) ~~if~~ if a later date is required by statute or

1 specified in the rule, the later date shall be the effective
 2 date;

3 (b) ~~Subject~~ subject to applicable constitutional or
 4 statutory provisions, an emergency rule shall become
 5 effective immediately upon filing with the secretary of
 6 state, or at a stated date less than ~~ten~~ {10} days following
 7 publication in the Montana administrative code or register,
 8 if the agency finds that this effective date is necessary
 9 because of imminent peril to the public health, safety, or
 10 welfare. The agency's finding and a brief statement of
 11 reasons therefor shall be filed with the rule. The agency
 12 shall take appropriate measures to make emergency rules
 13 known to every person who may be affected by them.

14 (c) if the legislature is not in session and 10 or
 15 more members of the legislature object in writing to the
 16 secretary of state to the adoption or amendment of a rule or
 17 emergency rule, the effective date of the rule or emergency
 18 rule is 30 days following the receipt of the 10th such
 19 objection by the secretary of state. Within this 30-day
 20 period, the secretary of state shall poll all members of the
 21 legislature by mail, in the manner provided under 43-322 but
 22 using first class mail, as to whether the rule shall be
 23 suspended until the next regular session of the legislature
 24 or shall take effect immediately. If a majority of ballots
 25 returned from each house of the legislature favor

INTRODUCED BILL

1 suspension, the effective date of the rule is January 30 of
2 the next odd-numbered year.

3 (3) The secretary of state may prescribe a format,
4 style and arrangement for rules which are filed pursuant to
5 this act and may refuse to accept the filing of any rule
6 that is not in substantial compliance therewith. He shall
7 keep and maintain a permanent register of all rules filed
8 (including superseded and repealed rules), which shall be
9 open to public inspection, and shall provide copies of any
10 rule upon request of any person or agency. Unless otherwise
11 provided by statute, the secretary of state may require the
12 payment of the cost of providing such copies."

-End-

STATE OF MONTANA

REQUEST NO. 318-77

FISCAL NOTE

Form BD-15

compliance with a written request received February 1, 19 77, there is hereby submitted a Fiscal Note
Senate Bill 120 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.
Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members
of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

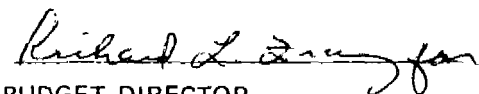
to provide for the suspension of an administrative rule during the interim between legislative sessions by mail ballot
of all members of the legislature.

ASSUMPTIONS:

- All rules published would be affected.
- Agencies would continue to adopt or amend about the same number of rules each year.
- The Secretary of State would have to poll the legislature several times each year.
- Pages of the code would have to be reprinted due to polling the members of the legislature.
- All subscribers would be notified after each poll.
- No increase in staff would be necessary.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>	<u>TOTAL</u>
Additional cost of proposed legislation	<u>\$2,553</u>	<u>\$2,934</u>	<u>\$5,487</u>


BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-7-77

SB 120 Senator Story, District 37, stated the bill is very similar to SB 101 and is intended to put the citizen on a par with state regulatory agencies. He stated it would prevent capricious rule-making as it would only take a request by ten or more senators to request a review of a regulation.

Proponents

Rod Gudgel, representing the Montana Nursing Homes Association, stated support of the bill saying we must have checks on unrestrained rule-making.

Doris Dietzen from the Secretary of State's Office, spoke neither in support or opposition, but suggested amendments were needed to make the bill workable and offered to meet with the committee in that regard.

Senator Roskie stated the Administrative Code Committee is meeting soon and requested those interested to meet with them to work out problems.

Opponents

Bob Lohn, attorney from the Governor's office, opposed the bill and suggested the bill be referred to the Administrative Code Committee. He stated under joint rules the legislature can now act on rules as five are now under consideration.

Bob Cochran, counsel for the Department of Revenue, reminded the committee of the testimony on SB 101 and urged support of the Administrative Code Committee's work.

Senator Story closed by saying he supported the Administrative Code Committee and its work. He was concerned that an individual who is adversely affected by a rule should not have to bear the burden to prove the point but rather, that burden should be on the state. He stated he wasn't too sure there are many departments of government who are concerned about individual's rights.

There being no further proponents or opponents the hearing was opened to questions by members of the committee.

STATE ADM.

SENATE ~~LOCAL GOVERNMENT~~ COMMITTEE

BILL

120
121
183

VISITORS' REGISTER

DATE 2/2/77

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPPO
Red Cady	Mount Nursing Home Assn	120	✓	
Herman Brokema	APA	121	✓	
Frank Y. LaBrecque	APA	121	✓	
Jack Dwyer	Mountain Fire Fighters Mountain Vol Fire Assn	183	✓	
ART KORN	Mount State Vol Fire Assoc	183	✓	
Henry F. Lehr	MT. State Vol Firemen's Assn	183	✓	
W. H. F. (Hew)	MT State Vol Firemen's Assn	183	✓	
ED DE COURCE	VOL. FIRE MEN	183	✓	
Geo W. Sager	Gallatin Co. Comm	121	✓	
Ray White	Gallatin Co. assessor	121	✓	
John J. Thompson	Gallatin Co. Dep. app. & Bur	121	✓	
Bob Cameron	Dept of Rev.	120		
D. Robert Lohr	Governor	120		✓
R. C. Bob Hanson	Rosebud Co. Commissioner	121	✓	
Ed. Smith	" " " "	121	✓	
William A. Lopez	Town & Clark Treasurers	121	✓	
W. J. Spink	Mont. Elected County Officials	121	✓	
Sen Ed Smith		121	✓	
Bill ASHER	AGRICULTURE PRES. ASSN.	121	✓	
Kenneth V. Nyquist	Roosevelt Co. Commissioner	121	✓	
John J. Helgeson	APA	121	✓	
Carson Haggard				
Edith Taylor	Yell Co. Assessor	121		
Sen E. Marley	Sen. Dis 121	121	✓	
Don Cameron	Sen. Dis 121	121		

State Administration COMMITTEE

Date 2/3/27

[illegible]

Page 2
Minutes
February 4
3:30 p.m.

Senator Roskie moved to confirm Leo Berry as Commissioner of State Lands.
THE MOTION CARRIED UNANIMOUSLY.

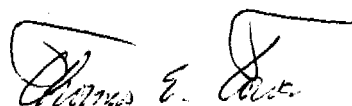
Senator Blaylock moved to confirm William Hunt as Worker's Compensation
Judge. THE MOTION CARRIED WITH SENATORS STORY AND ROSKIE VOTING NO.

SENATE BILL 120

Senator Story moved to amend the bill by striking everything following the
enacting clause and inserting new material re Section 82-4207, R.C.M. 1947
(see attached committee report). THE MOTION CARRIED UNANIMOUSLY.

Senator Story moved the bill Do Pass As Amended. THE MOTION CARRIED WITH
SENATORS BLAYLOCK AND ROSKIE VOTING NO.

There being no further business, the meeting adjourned to reconvene
February 5, 1977, at 8:00 a.m.



Chairman

SENATE COMMITTEE STATE ADMINISTRATION

Date 3/4/77 Senate Bill No. 120 Time 4:55

NAME	YES	NO
Senator Tom Towe, Chairman	X	
Senator Pete Story, Vice Chairman	X	
Senator Bob Brown	X	
Senator Tom Rasmussen	X	
Senator George Roskie		X
Senator John Devine	X	
Senator Greg Jergeson	X	
Senator Chet Blaylock		X

Jill Kadyan
Secretary

Thomas E. Geric
Chairman

Motion: by Sen. Story that SB120
DO Pass as Amended

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

February 7

19 77

MR. President

We, your committee on State Administration

having had under consideration Senate Bill No. 120

Respectfully report as follows: That Senate Bill No. 120,
introduced bill, be amended as follows:

1. Amend title, line 7.

Following: "SECTION"

Strike: "82-4205"

Insert: "82-4207"

2. Amend the bill, pages 1 through 3.

Strike: all of the bill following the enacting clause

Insert: "Section 1. Section 82-4207, R.C.M. 1947, is amended to read as follows:

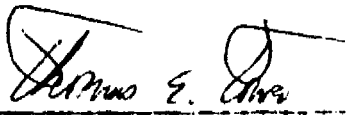
"82-4207. Petition for adoption of rules. An interested person or, when the legislature is not in session, a member of the legislature on behalf of an interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. If an agency receives 10 or more petitions from members of the legislature while it is not in session objecting to the adoption or amendment of a rule the agency shall notify the secretary of state. The secretary of state shall poll all members of the legislature by mail within 30 days. The poll shall be conducted in the manner provided under 43-322 but using first class ~~POSTAGE~~

mail, as to whether the amendment or adoption of the rule should remain in effect or if the effective date on the rule should be amended to be the last day of the next regular session of the legislature. The majority

of ballots from each house of the legislature returned to the secretary of state within 14 days after the poll is mailed will determine the result. If the poll is on an emergency rule and the result of the poll is against the emergency rule it shall be void. Each agency shall prescribe by rule the form for petitions. Whenever an interested person not represented by a legislator petitions an agency, the agency shall prescribe by rule the procedure for their submission, consideration and disposition. Within sixty (60) days after submission of a petition by an interested person not represented by a legislator, the agency either shall deny the petition in writing (stating its reasons for the denial) or shall initiate rule-making proceedings in accordance with section 82-4204."

AND AS SO AMENDED, DO PASS

BR



Chairman

March 3, 1977

Chairman Brand called the meeting to order at 8:00 a.m.; Rep.'s Lien and Bardanouve were excused for other meetings; and Menahan and Ryan were absent.

Hargesheimer submitted his summary - see attachment #1.

SB 104-Sen. Hims1, sponsor--This results from a number of audit studies dealing with institutions. Payroll should be based upon actual payroll figures submitted after the payroll period, not estimated; and they must be submitted within 10 business days. Now, people are paid partially on an estimated basis. There's no audit trail to follow due to the ongoing estimation. 10 days is the same as required by public business. If you used calendar days it would include Sundays and holidays; and if you use business days it doesn't require any overtime.

BRAND-Page 2, lines 4 and 5 - you put in "all payroll systems", why? MORRIS BURSETT, Legislative Auditor-Because all systems are not on the "central payroll system".

SB 38-Sen. Murphy, sponsor--This accepts the retrocession of jurisdiction over the lands of the Big Horn Battlefield. This was brought to my attention by the superintendent of Yellowstone Park. Montana has no legal jurisdiction there because it is a national monument. The only people with any authority are park rangers, and the police can't go in there and arrest anyone - so kids in Dillon can go in there and have a pot party and nobody can do anything. With this bill, both state and local enforcement officers can go in. I urge your favorable consideration.

SB 51-Sen. Story, sponsor--This is a simple little bill - each of the portions in the Constitution that require 2/3 vote will now say 2/3 of each house. This restores the two house set-up. Most important, veto votes require 2/3 "present" - there could be a very important bill vetoed someday, and may come down to a question of who was present - someone who wasn't there for roll call, but voted; or someone who would answer roll call and then not vote. If you don't want to go to 2/3 of the body, you should at least say 2/3 present and voting.

FEDA-If we do amend it back, will the Senate accept it? STORY-I hope. I have no objection to changing it back to "present and voting"

SB 120-Sen. Story, sponsor--This gives a mechanism for objections to administrative rules. I don't anticipate that this would be used very often. With this, 10 members can question a rule, and it doesn't require registered mail. Within 10 days, the number of responses determines whether any action will be taken. It is conceivable that we have a few cranks in the body, but when you get 10 legislators, usually they aren't all crazy. I have spent a number of years looking at administrative rule making, and this puts a handle on the process. While we are in session, we have good procedures for changing rules. There are also court opinions that require us to tighten up our procedures. Anytime we change rules, the court says we have to be tighter. We don't need rules to be arbitrary. I don't expect this to be used very much. (He submitted written testimony - see attachment #2)

ROD GIDGET, Montana State Pharmaceutical Association, and Montana Nursing Homes--With the rate at which rules and regulations are made, we need to be more concerned about the rule makers than the legislators. They are in a position where there are no checks. Having been in the position of being a rule maker before, it is a powerful position. The two associations I represent are very strongly in favor of this bill since it proposes a check on such procedures.

OPPONENTS

ROBERT LOHN, Governor's Staff Attorney--The more I listen to Senator Story, the more I am persuaded of the genuine concern he is showing by this bill. I am examining this bill with the Administrative Procedures Committee; but we haven't finished. This bill seems to be the most tactful. There are problems: (1) should the legislature act as any other than a full body? (2) all of the checks and balances go back and forth so you get a lot of input. Each of the bills that move the legislature into interim exercise removes the option for informed decision making and removes the option to act as a group. This allows you to act as individuals, so should you pass it? (3) when the mail ballot goes out, each side should have the right to state its case. (4) the bill needs more clarity on what happens to a rule. What does the repealer do? We want some provision for the agency to propose another option when such rule is needed immediately. The repealer currently extends the effective date until the following legislature - emergency rules would be immediately deemed void. (5) the best way for you to get a handle on it? I praise the annual sessions bills - your presence as a body makes it easier.

STORY-I kind of agree that it would be better to have the full body here, but that is impractical if just someone down in Anaconda got in trouble. This puts some of the agencies on speaking terms with legislators. It would be alright to put statements from both sides on the communique'.

KROPP-This using first-class mail - you don't think it should be registered? STORY-If a legislator is really conscientious, he will have a place to forward his mail. Senator Jergeson has a bill in that allows us to review all of the rules. This only allows us to question peculiar ones. So, when something is in question, it is suspended until the last day of the next session. LOHN-First-class mail is now OK with the courts. STORY-First-class saves a lot of money - registered mail is quite expensive. Since the last session, there were three controversial rules and once the code committee got on them, they were rescinded. TURNER-Do you want to suspend the law, or do you want to let the agency take another stab? LOHN-All of the agencies I deal with are concerned about their relations with you, and are very careful not to offend the legislature. Where you object, they would do what they could. BRAND-If you saw problems arise, you would go to the Interim Code Committee, and the the agency. Do you really think all legislators would do that? Why didn't you implement this? If 10 people decide to do something, they could do it. This could lead to problems. STORY-There are 31 occupational licensing divisions, and a lot of them are proposing rules that smack of restraint rather than consumer protection. Still, there are some arbitrary and complex rules. This bill looks to the time when there are people who are less likely to get along. BRAND-Do you think this type of legislation is better than Interim Code Committees? STORY-I think they all should pass, because they all address different things. I think we need them all. MULAR-Would you object to our establishing rules? STORY-No, not at all.

Brand suggested that the committee wait on Executive action until amendments could be worked out.

SB 38-Turner moved that the bill BE CONCURRED IN, which carried unanimously. Turner will carry on the floor.

MEETING ADJOURNED - 9:15 a.m.

Joe Brand, Chairman

Anita C. Sierke
Anita C. Sierke, Secretary

EXECUTIVE SESSION ONLY

Chairman Brand called the meeting to order at 9:00 a.m., roll call was taken, with Bardonoue being absent.

SB 120-Dick Hargesheimer passed out amendments which had been agreed upon by Senator Story and Bob Lohn. "The first two amend the title, then everything after the enacting clause has been stricken. The legislative poll has no weight unless it is used in court. The poll cannot change the rule. What this does is change the bill considerably as far as the authority of the legislature."

LIEN-What if they only had 10 responses, and 8 of them were against it? DICK-You have to have the majority of members of both houses. MULAR-There might be 15 - 20 people sitting in committee knowing what the intent is, and then the code committee - which wouldn't know the original intent - being able to change things. Shouldn't we maybe mandate that some percentage of the two houses agree? TURNER-There was something in a couple of sessions ago - a rule that the Secretary of State had to write a paragraph about the intent of the bill. MULAR-We are giving the Administrative Code Committee the inherent power to poll us. TOWER-This would give them some leverage in court. MULAR-Most of the challenges have been instituted by the code committee. LIEN-I feel the code committee is the strongest body as far as rules. MULAR-If there were 40 protests in both houses to any rule, it would mandate a poll. BRAND-But I don't ever know that these things have been done until I read about it in the paper.

Feda moved to adopt the amendments, motion carried. Robbins moved to send the bill out AS AMENDED BE CONCURRED IN, the motion was carried unanimously. Tower will carry the bill on the floor.

SB 162-Brand read the amendments, Meyer moved the amendments, motion carried unanimously. Feda moved the bill AS AMENDED BE CONCURRED IN, motion carried unanimously. Feda will carry on the floor.

SB 265-Turner moved the bill BE CONCURRED IN, motion carried unanimously. Turner will carry the bill on the floor.

SB 336-Brand read the amendments, and a letter from Larry Nachtsheim concerning the bill. Mular moved the amendments, motion carried unanimously. Feda moved the bill AS AMENDED BE CONCURRED IN, motion carried unanimously. Mular will carry on the floor.

SB 401-Feda moved NOT BE CONCURRED IN. Brand asked that the amendments be put in in committee, whether the bill went out do pass or not. Mular moved the amendments by the firefighters be put into the bill. (see attachment #2) SAMPSON-The only place that building codes will be reviewed is the Department of Administration. HANSON-I disagree. This does do as Al said as far as state level, but if there is a conflict, the Fire Marshal can still promulgate his own regulations. MULAR-Does the breach come on the lower levels? HANSON-Yes and no - because cities, the state and the Fire Marshal can still promulgate rules. FEDA-Don't federal laws come into this too? LIEN-If your amendments are accepted, can you kill the bill? (ha-ha-ha-ha-ha) Mular moved the amendments, the motion carried with Lien and Kropp voting no. Robbins presented another amendment from the Helena City Manager (see attachment #3), and moved that the amendment be accepted, motion carried with O'Connell voting no. Feda moved the bill NOT BE CONCURRED IN, Mular made a substitute motion that the bill go out AS AMENDED BE CONCURRED IN, motion failed on a roll call vote 6 - 8 with Brand, Kanduch, Ryan, Feda, Kropp, Smith, Tower, and Turner voting no. Feda moved

SENATE BILL NO. 120

INTRODUCED BY STORY

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
SUSPENSION APPROVAL OF AN ADMINISTRATIVE RULE DURING THE
INTERIM BETWEEN LEGISLATIVE SESSIONS BY MAIL BALLOT OF ALL
MEMBERS OF THE LEGISLATURE; AMENDING SECTION SECTIONS
82-4205 ~~82-4207~~ 82-4203.5 AND 82-4205, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Refer to Third Reading Bill

{Strike everything after the enacting clause and insert:}

Section 1. Section 82-4203.5, R.C.M. 1947, is amended
to read as follows:

"82-4203.5. Powers of the committee. (1) The committee
shall review all proposed rules referred to it under section
82-4204 and may:

(a) prepare written recommendations for the adoption,
amendment or rejection of a rule and submit those
recommendations to the department proposing the rule when a
rule-making hearing will not be held in accordance with the
provisions of section 82-4204;

(b) prepare recommendations for the adoption,
amendment or rejection of a rule and submit oral or written
testimony at a rule-making hearing; or

(c) request that a rule-making hearing be held in
accordance with the provision of section 82-4204; ~~or~~

~~(d) if the legislature is not in session, poll all
members of the legislature by mail to determine whether a
proposed rule is consistent with the intent of the
legislature, provided that the poll shall include an
opportunity for the agency to present a written
justification for the rule to the members of the
legislature; OR~~

~~(E) SHOULD 20 OR MORE LEGISLATORS OBJECT TO ANY RULE,
THE COMMITTEE SHALL POLL THE MEMBERS OF THE LEGISLATURE
UNDER SUBSECTION (D).~~

(2) The committee shall prepare a report to the
legislature at least once each biennium and may recommend
amendments to the Administrative Procedure Act or the
repeal, amendment or adoption of a rule as provided in
section 82-4203.1."

Section 2. Section 82-4205, R.C.M. 1947, is amended to
read as follows:

"82-4205. Filing of rules--effective date of rules.
(1) On or before the 60th day following the effective date
of this act, each agency shall file with the secretary of
state a certified copy of each rule adopted by it on or
before the effective date of this act and remaining in
effect. Any rule not so filed shall be deemed to have been

REFERENCE BILL

1 abrogated by the agency and shall be void and of no effect.

2 (2) Each agency shall file with the secretary of state
3 a certified copy of each rule adopted by it subsequent to
4 the effective date of this act. Each rule shall become
5 effective ~~ten--(10)~~ days after publication in the Montana
6 administrative register or code as provided in section 6
7 [82-4206] of this act, except that:

8 (a) ~~If~~ if a later date is required by statute or
9 specified in the rule, the later date shall be the effective
10 date.

11 (b) ~~Subject subject~~ to applicable constitutional or
12 statutory provisions, an emergency rule shall become
13 effective immediately upon filing with the secretary of
14 state, or at a stated date less than ~~ten--(10)~~ days following
15 publication in the Montana administrative code or register,
16 if the agency finds that this effective date is necessary
17 because of imminent peril to the public health, safety or
18 welfare. The agency's finding and a brief statement of
19 reasons therefor shall be filed with the rule. The agency
20 shall take appropriate measures to make emergency rules
21 known to every person who may be affected by them.

22 (3) The secretary of state may prescribe a format,
23 style and arrangement for rules which are filed pursuant to
24 this act and may refuse to accept the filing of any rule
25 that is not in substantial compliance therewith. He shall

1 keep and maintain a permanent register of all rules filed
2 (including superseded and repealed rules), which shall be
3 open to public inspection, and shall provide copies of any
4 rule upon request of any person or agency. Unless otherwise
5 provided by statute, the secretary of state may require the
6 payment of the cost of providing such copies.

7 (4) In the event that the administrative code
8 committee has conducted a poll of the legislature in
9 accordance with 82-4203.5, the results of the poll shall be
10 published with the rule, and shall be admissible in any
11 court proceeding involving the validity of the rule. In the
12 event that the poll determines that a majority of the
13 members of both houses find the proposed rule is contrary to
14 the intent of the legislature, the rule shall be
15 conclusively presumed to be contrary to the legislative
16 intent in any court proceeding involving its validity."

-End-